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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,108	07/11/2006	Ulf Dietrich	WAS0737PUSA	4368
22045 7590 03/17/2009 BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075				
EXAMINER				
LEE, DORIS L				
ART UNIT		PAPER NUMBER		
1796				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Attachment to Advisory Action**

1. Applicant's response filed February 27, 2009 has been fully considered but is not persuasive for the reasons set forth below:

2. **Applicant's argument:** The present invention required both polyoxyethylene and polyoxypropylene or polyoxybutylene moieties. Kinoshita discloses no such polymers. The properties of the polymers of the instant invention are very different to the properties of the polymers of Kinoshita.

**Examiner's response:** *It is noted that in paragraph [0010] of Kinoshita, listed among the possible polyalkylene glycol groups are both monomers of polyethylene glycol as well as monomers of both oxyethylene and oxypropylene units. It is the examiner's position that monomers which consist of oxyethylene and oxypropylene meet the limitation as set forth in section c) and section d) of claim 1 as those monomers do not preclude the inclusion of other types of repeating units within the monomer structure. Although the polymers of Kinoshita may be different from the embodiments as presently claimed, it is the examiner's position that when considered under the broadest reasonable interpretation, the polymers of Kinoshita still meet the limitation of the claims as currently presented. As a practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith." In re Brown, 459 F.2d 531, 535, 173 USPQ 685, 688 (CCPA 1972).*

3. **Applicant's argument:** Applicant's monomers c) and d) are separate monomers, and as such, applicant's polymers are structured with a main chain to which separate, pendant polyoxyethylene and polyoxypropylene groups are attached.

**Examiner's response:** *It is noted that the structure to which the applicant is referring to (ie, the main chain with pendant groups) is not explicitly elucidated in the claims and therefore it does not need to be specifically set forth in the rejection. However, the examiner notes that the polymers of Kinoshita do have the same graft polymer/pendant structure. Please refer to Formula 3 on Page 3 of Kinoshita which teaches that the oxyalkylene units are pendant off of a polymerizable unsaturated group. Kinoshita then uses the monomer of Formula 3 to incorporate it into the dispersant used in cements (please see paragraph [0017] of Kinoshita).*

4. **Applicant's argument:** One skilled in the art could not predict whether a Kinoshita copolymer would be successful as a protective colloid in preparing redispersible polymer powders.

**Examiner's response:** *It is noted that the applicant presents arguments about how the polymer of Kinoshita would not form a protective colloid and therefore does not meet the limitations of the claim. It is noted that the "protective colloid" is not explicitly recited in the claims. The motivation for using the polymer of Kinoshita in the process of spray drying is set forth in paragraph 5 of the Office Action mailed on November 24, 2008.*

5. **Applicant's argument:** Applicants present surprising and unexpected results indicating the superior performance of their inventive polymer over casein.

**Examiner's response:** *Although the data presented in Table 2 may show some improvement of the inventive embodiments over casein, in order to show unexpected results, one must show data that is commensurate in scope with the instant claims as well as over the closest prior art. The data presented is not commensurate to the scope of the claims, for example, all the embodiments use acrylic acid to correspond to monomer a) in claim 1. However, the monomer of claim 1 is broadly claimed so that the scope is much larger than that of acrylic acid. The same can be said for monomer b) which is claimed to be sulfonate or sulfate functional groups, whereas the examples all use 2-acrylamido-2-methylpropane-sulfonate. Also, there is no data presented to compare the present invention over the closest prior art - Kinoshita. Therefore the determination of surprising or unexpected results is not conclusive.*

#### **Conclusion**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Doris L. Lee whose telephone number is (571)270-3872. The examiner can normally be reached on Monday - Thursday 7:30 am to 5 pm and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571)272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Doris L Lee/  
Examiner, Art Unit 1796

/Vasu Jagannathan/  
Supervisory Patent Examiner, Art Unit 1796